

Kalavati Rajendra Kokale Vs State Of Maharashtra

Court: Bombay High Court

Date of Decision: Jan. 30, 2025

Acts Referred: Maharashtra Village Panchayats Act, 1950 " Section 29(3), 34

Hon'ble Judges: Sandeep V. Marne, J

Bench: Single Bench

Advocate: Drupad S. Patil, Namitkumar S. Pansare, Dhruti Kapadia

Final Decision: Allowed

Judgement

Sandeep V. Marne, J

1. Petition raises following two broad issues:आप,न

(i) Whether resignation tendered by Sarpanch would take effect if the same is withdrawn at the time when it is taken up for verification in the Gram

Panchayat meeting?

(ii) For preventing the resignation to take effect, whether filing of Dispute under the provisions of Section 29(3) of the Maharashtra Village

Panchayats Act, 1950 is necessary by a Sarpanch who has already withdrawn the resignation?

2. Petitioner has filed this Petition challenging order dated 7 June 2024 passed by the Collector, Raigad for declaring that a vacancy has occurred on

the post of Sarpanch of village Ainghar, Taluka-Roha, District Raigad and appointing returning officer to conduct elections for vacant post of

Sarpanch. Petitioner is aggrieved by the action of the Collector in treating that her resignation on the post of Sarpanch has taken effect under the

provisions of Section 29 of the Village Panchayats Act, even though she had withdrawn the resignation during the meeting of the Gram Panchayat

convened for verification of her resignation.

3. Facts of the case in narrow compass. Election of Gram Panchayat, Aindhar, Taluka-Roha, District-Raigad were conducted in February 2021.

Petitioner was elected as a Member of the Gram Panchayat in the elections. The post of Sarpanch was reserved for backward class women.

Petitioner was elected as Sarpanch from amongst elected Members of the Gram Panchayat on 10 February 2021. It is the case of the Petitioner that

she was forced to resign from the post of Sarpanch on 5 March 2024 and submitted her letter of resignation to the Chairman of the Panchayat Samiti.

In a similar manner, Upsarpanch also tendered his resignation on the same day. For verifying the resignations submitted by Petitioner and the

Upsarpanch, meeting of the Gram Panchayat was convened vide letter dated 7 March 2024 and the same was held on 15 March 2024. The

resignation submitted by Upasarpach was scrutinised and confirmed. However, when resignation letter of Petitioner was taken up for discussion, she

withdrew the same during the course of meeting dated 15 March 2024. Accordingly, withdrawal of resignation was recorded in the minute book and

minutes of the meeting were sent to higher authorities for taking further action. On same day i.e. 15 March 2024 Petitioner in her capacity as

Sarpanch and the Gram Vikas Officer, jointly submitted letter dated 15 March 2024 to Block Development Officer (BDO) informing him about

withdrawal of resignation by Petitioner and forwarded to him the minutes of the meeting dated 15 March 2024. The BDO, in turn forwarded the letter

dated 15 March 2024 to Tehsildar together with minutes of the meeting dated 15 March 2024 by his letter dated 5 April 2024. In the meantime,

Petitioner continued functioning as Sarpanch and participated in the meeting held on 8 April 2024 in which new Upasarpach was elected. This was

done by her on an assumption that her resignation had not taken effect on account of its withdrawal.

4. In the above background, it appears that copy of the letter dated 5 April 2024 sent by BDO to Tehsildar reached the office of Collector, Raigad,

who took cognizance thereof and passed order dated 7 June 2024 recording that Petitioner's resignation has been accepted by Chairman,

Pachayat Samiti, Roha, and that the posts of Sarpanch and Upsarpanch are vacant on 13 June 2024. Petitioner is aggrieved by Collector's order

dated 7 June 2024 and has accordingly filed the present Petition. However, in the meantime, meeting of the Gram Panchayat was held on 13 June

2024 and Respondent No.4 was elected as Sarpanch. One of the members of Gram Panchayat - Kishor Dayaram Navle made representations dated

13 June 2024 and 19 June 2024 pointing out errors in election of new Sarpanch. In the above background present Petition is filed by the Petitioner

challenging Collector's order dated 7 June 2024 as well as resolution adopted by the Gram Panchayat in the meeting held on 13 June 2024.

5. By order dated 15 October 2024, this Court issued notice for final disposal of the Petition to the Respondents. Accordingly, the notices have been

duly served on Respondent Nos.3 and 4 as per the Bailiff's report. However, none has appeared on behalf of Respondent Nos.3 and 4 despite the

Petition being listed on 14 January 2025, 21 January 2025 and 22 January 2025. Accordingly, hearing of the Petition has progressed in absence of any

representation by Respondent Nos.3 and 4.

6. Mr. Patil, the learned counsel appearing for the Petitioner would submit that the resignation of the Petitioner is erroneously treated to have been

accepted by the Collector ignoring the position that she had withdrawn the same in the meeting dated 15 March 2024. He would submit that a

Member, Upasarpnch or Sarpanch is entitled to withdraw the resignation before end of the meeting convened for verification and confirmation

thereof. That once the resignation is withdrawn there is nothing to be discussed in the meeting and that therefore, the resignation does not take effect.

He would submit that the Sarpanch has inherent right to withdraw the resignation and the moment the resignation is withdrawn, further proceeding of

the meeting are required to be terminated. In support of his contention, Mr. Patil would rely upon following judgments of this Court:

(i) Kumudini Ratilal Bhagat and Ors. V/s. State of Maharashtra and Ors. (1987) Mh.L.J. 462

(ii) Babanrao A. A. Uttamrao A. A. Jadhav A. A. V/s. A. A. The A. A. Additional Collector and Ors. rit Petition No. 9577 of 2012, decided on 5

August 2016(Aurangabad Bench)

(iii) Mina Kalyan Devdhe V/s. Commissioner, Nashik Division and others 2019 (1) Mh.L.J.212

7. Mr. Patil would further submit that once the resignation is withdrawn, it is not necessary for the Sarpanch to raise a Dispute before the Collector

under the provisions of Sub Section (3) of Section 29 of the Village Panchayats Act as making of such Dispute is warranted only in a case where the

Sarpanch's resignation is verified and confirmed in the meeting and is slated to take effect on expiry of period of 7 days. Since the resignation

itself ceases to exist, there is no question of the same taking effect and that therefore filing of Dispute before the Collector is not necessary. Mr. Patil

would therefore pray for setting aside order of the Collector dated 7 June 2024 as well as resolution of Gram Panchayat electing Respondent No.4 as

Sarpanch adopted on 13 June 2024.

8. The Petition is opposed by Ms. Kapadia, the learned AGP appearing on behalf of Respondent Nos.1 and 2-State. She would submit that the

Petitioner has not disputed the fact that she has tendered resignation. That once the resignation is voluntarily tendered and accepted by following the

provisions of Sections 29 and 34 of the Village Panchayats Act read with Rule 3 of the Resignation Rules, there is no scope for withdrawal of such

resignation. She would submit that the statutory scheme is such that the resignation automatically takes effect and does not require any overt act of

acceptance. She would submit that the concept of withdrawal of resignation would apply essentially to a situation where some authority is expected to

accept the same. The statutory scheme of Village Panchayats Act is such that a Member, Upsarpanch or Sarpanch tendering resignation

automatically loses the post unless he/she succeeds in a Dispute before the Collector or Divisional Commissioner. She would submit that in any case,

Petitioner has not filed any Dispute before the Collector and in absence of filing of the Dispute, her resignation has automatically taken effect by a

deeming fiction. She submits that even if right of withdrawal of resignation is recognised in the provisions of Section 29 of the Village Panchayats Act,

still filing of Dispute before the Collector is mandatory to avoid consequences of taking effect of the resignation. She would submit that after

resignation of Petitioner took effect, new Sarpanch has already been appointed and in such circumstances, there is no question of setting the clock

back at this distant point of time. She would accordingly pray for dismissal of the Petition.

9. Rival contentions of the parties now fall for my consideration.

10. The first issue that arises for consideration is whether a Member, Upasarpanch or Sarpanch tendering resignation under the provisions of Section

29 and/or Section 34 of the Village Panchayats Act are entitled to withdraw the same. The statutory scheme under Sections 29 and 34 of the Village

Panchayats Act do not really recognise an express right of withdrawal of resignation. Section 29 of the Village Panchayats Act deals with resignation

by a Member and Sarpanch whereas Section 34 of the Village Panchayats Act deals with resignation by a Sarpanch or Upsarpanch. Sections 29 and

34 of the Village Panchayats Act provide thus:

Section 29. Resignation of member and disputes regarding resignation.

(1) Any member who is elected may resign his office by writing under his hand addressed to the Sarpanch and the Sarpanch may resign his office of member by

writing under his hand addressed to the Chairman of the Panchayat Samiti. The resignation shall be delivered in the manner prescribed.

(2) On receipt of the resignation under sub-section (1), the Sarpanch or, as the case may be, the Chairman of the Panchayat Samiti shall forward it to the Secretary

who shall place it before the meeting of the Panchayat next following.

(3) If any member or the Sarpanch whose resignation is placed before the meeting of the Panchayat wants to dispute genuineness of the resignation, he shall refer

such dispute to the Collector within seven days from the date on which his resignation is placed before the meeting of the Panchayat. On the receipt of dispute, the

Collector shall decide it, as far as possible within fifteen days from the date of its receipt.

(4) The member or Sarpanch aggrieved by the decision of the Collector may, within seven days from the date of receipt of the Collector's decision, appeal to the

Commissioner who shall decide it, as far as possible, within fifteen days from the date of receipt of the appeal.

(5) The decision of the Collector, subject to the decision of the Commissioner in appeal, shall be final.

(6) The resignation shall take effect, -

(a) where there is no dispute regarding the genuineness, after the expiry of seven days from the date on which it is placed before the meeting of the Panchayat.

(b) where the dispute is referred to the Collector and no appeal is made to the Commissioner after the expiry of seven days from the date of rejection of the dispute by

the Collector

(c) where an appeal is made to the Commissioner, immediately after the appeal is rejected by the Commissioner'

Section 34.- Resignation by Sarpanch or Upa-Sarpanch:

1. The Sarpanch may resign his office by writing under his hand addressed to the Chairman of the Panchayat Samiti.

2. The Upa-Sarpanch may resign his office by writing under his hand addressed to the Sarpanch.

3. The notice of resignation shall be delivered in the manner prescribed.

4. The provisions of sub-sections (2), (3), (4), (5) and (6) of section 29 shall mutatis mutandis apply to the resignations tendered under sub-sections (1) and (2) of this

Section as they apply to the resignation tendered under sub-section (1) of that Section.

11. The statutory scheme of Section 29 of the Village Panchayats Act is such that a Member, Sarpach or Upasarpanch desirous of tendering

resignation can tender the letter/notice of resignation to the prescribed authority. So far as Sarpanch is concerned he /she can tender resignation to the

Chairman of the Panchayat Samiti under Section 34(1) of the Village Panchayats Act. A Member or Upa-sarpanch needs to tender the same to the

Sarpanch.

12. Upon receipt of resignation by Sarpanch the Chairman of the Panchayat Samiti is required to forward the same within a period of 7 days to the

Secretary, who then needs to place the same before the meeting of the Panchayat Samiti next following.

13. Thus, what is contemplated under Sub Section 2 of Section 29 is mere placing of the resignation before the meeting of the Panchayat. Neither the

Chairman of the Panchayat Samiti nor the Gram Panchayat have been conferred with power to take a decision on such resignation tendered by

Sarpanch. The moment the resignation is placed in the meeting before the Panchayat Samiti, the resignation takes effect on expiry of period of 7 days

under the provisions of Section 29(6)(a) of the Village Panchayats Act, if there is no dispute about the genuineness of resignation. Thus, in ordinary

circumstances, where there is no dispute about the genuineness of the resignation, no overt act is needed on the part of any authority in relation to

resignation tendered by Sarpanch.

14. In the present case, the Collector has erroneously recorded a finding that Chairman of Panchayat Samiti has accepted Petitioner's resignation.

Under Section 29 of the Village Panchayats Act, Chairman of Panchayat Samiti is not vested with jurisdiction, power or authority to take any decision

on resignation so tendered. All that Chairman of Panchayat Samiti is supposed to do is to merely accept and acknowledge the resignation and hand it

over to the Secretary within a period of 7 days. The role of the Chairman of Panchayat Samiti comes to an end the moment he/she hands over the

resignation to the Secretary. Thus, the resignation having no dispute about the genuineness, automatically comes into effect after expiry of period of 7

days from the date of holding of the meeting in which it is placed by the Secretary. Taking effect of resignation is automatic and a deeming fiction

without requiring any overt act on the part of any person or authority. It is only in a case where the person tendering resignation wants to dispute its

genuineness, he can file a Dispute before the Collector within a period of 7 days from the date of the meeting i.e. before the resignation takes effect.

The Collector then adjudicates as to whether the resignation is genuine or not and after expiry of period of 7 days from the date of such adjudication

by Collector the resignation takes effect. Even during pendency of Appeal before the Divisional Commissioner, taking effect of resignation gets

suspended and the moment the Appeal is rejected, the resignation immediately takes effect.

15. However, this Court has repeatedly held that though there is no specific provision in Section 29 of the Village Panchayats Act for withdrawal of

resignation, a Member, Upa Sarpanch or Sarpanch tendering resignation has inherent right to withdraw the same. The Division Bench of this Court in

Kumudini Ratilal Bhagat (supra) has held in paragraphs 9 and 11 as under:-

9. The scheme under section 29 of the Act is already analysed. No doubt it does not incorporate within its fold the necessity of accepting the resignation by any

authority or even in the meeting of the Panchayat held under sub-clause (3). Making the resignation effective has obviously made contingent on some time element

in the context of certain events as stipulated in various clauses of the said provision. The prominent land mark would be the obligation placed on the Chairman to

place such resignation through the Secretary in the meeting of the Panchayat next following. Though it may be that it does not prescribe any power vesting in the

Panchayat either to accept or reject such resignation in such a meeting, still the convening of such meeting which must be with some purpose has been made

obligatory. In the chronological order first the resignation is given whereafter the meeting is convened whereafter certain contingencies are contemplated, including

the challenge made by the member to the genuineness of such resignation. The concept of genuineness and the dispute about the same would have multifold facets

and could not be restricted only to one or two items such as the document is forged for instance a person may have some justification to contend that the resignation

was forced from him or that a document purporting to be such resignation which was really intended for different purpose in a different situation has been misused.

This apart, as stated after receipt of such resignation a necessity immediately arises, to convene the next following meeting and it is in that meeting that such

resignations are to be placed before the members. As indicated, one of the reasons which can be reasonably visualised would be to avoid any secrecy or dispel any

doubt and to make it a matter of record which would be also necessary for the knowledge and information of every one even including the member concerned and as

indicated earlier, the purpose also would have some relevance about giving effectiveness to the resignation. Upto this stage everything goes on one track whereafter

there is some diversion in the sense that if the member wants to raise any dispute he has to adopt the course as prescribed and then the procedure and consequences

are to be followed. The provisions of sub-clause (6) have their own relevance which is already discussed. However, even if some of those provisions relating to the

events that occur after convening the said meeting as prescribed in sub-clause (3) are kept aside from consideration, still the fundamental fact about obligation to call

the meeting and to place such resignation in that meeting which remains intact has a firm basis and also a specific purpose. As indicated, in the absence of any

prohibition under the statute when giving of a resignation can be an act of volition then implicit therein would be a right inherent in such a person to withdraw the

resignation of his own volition. As stated, in contrast to the earlier provisions in some other Acts the legislature did not make the resignation irrevocable the moment

it is received by the Sarpanch. At least the span between the receipt of such resignation and the convening of the meeting next following has been obviously kept

flexible and in our opinion this span of time or period is not capable of generating any controversy though as to whether such flexibility can be extended beyond that

period once the meeting is held is capable of generating a debate. Though there is no provision either to accept or reject the resignation for its effectiveness, certain

field is left open. In the Misra's case cited supra the Supreme Court has accepted the inherent right of a person to withdraw the resignation till it reaches the point of

time on which the resignation is to become final in the absence of any prohibition in the statute. The same situation exists in this provision also though herein the

postponement is on account of the statutory provisions in contrast to those decisions wherein it was by the act of the person concerned. The real nature and the

controversy vis-a-vis such a resignation would be capable of being brought on the surface either in that meeting or even before thereto. The member is also made

aware of the resignation through that meeting. This mile-stone as prescribed in sub-clause (3) of convening the meeting and placing the resignation in that meeting

would, in our opinion, serve as the minimum point of time upto which a label of finality to that resignation need not be attached and consequently therefore as a

logical corollary till then a right would vest in such a member to withdraw the resignation. Such construction and especially such right vesting in the member will

have to be reasonably and rationally read in this provision itself. Even sub-clause 6(a) indicates that in case there is no dispute about the genuineness the said

resignation should be deemed to take effect seven days from the date on which it is placed in such a meeting. Leaving aside the controversy sought to be raised

about the purpose of this period of seven days which according to Shri Kamerkar, the learned Counsel, as stated earlier, relates and restricts only to the time element

for giving an opportunity to the member concerned to move the Collector in case he has a dispute about the genuineness of the resignation, still upto the point of

time when the meeting & called by the Sarpanch once he received the resignation and even upto holding of such a meeting the resignation cannot be said to have

become effective and if that be so then the right to withdraw such a resignation can well be exercised by such a member at least till that point of time.

It may be that in some cases the resignation is tendered by a member on account of some misunderstanding or misreading of certain facts which he realises after

tendering the resignation but before it is placed before the said meeting or extending it further may be in a given case in such a meeting certain explanation may be

tendered by the members or even the Sarpanch which may remove such misunderstanding or which may make the member to realise that there was no justification for

giving the resignation. Exhaustive list of contingencies obviously cannot be prescribed.

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11. Therefore, on the rational basis some reasonable period for rethinking is necessary to be allowed especially when there is, no, prohibition, in, the,

provision, unlike, some, other statutes. One, can, easily, go, thus, far, to, enunciate, that having regard to the scheme of the said provisions

along with, the, legislative, intent, behind, the, same, and, in, the context of the various clauses enveloped in that provision, the, resignation,

tendered, by, a, member, may, not become effective until at least the meeting is called and, even, until, such, resignation, is, placed, in, that

meeting. In other words, it would still remain in that nebulous form till the meeting is called or even till the meeting is held and concluded on the scheduled date and

as a logical rider corollary it would follow that till then the member would be within his rights to voluntarily withdraw the said resignation. This in our opinion would

be the minimum that can be safely arrived at on the premise of this harmonious construction of these provisions.

(emphasis supplied)

16. Judgment in Kumudini Ratilal Bhagat is followed by another Division Bench in Babanrao Uttamrao Jadhav (supra) in which this Court in

paragraphs 11 and 12 as under:-

11. The phrase 'genuineness' would mean that it is not false, forged, fictitious, stimulated, spurious or counterfeit. As per Black's Law Dictionary the expression

genuineness means authentic or real, something that has the quality of what is purported to be or to have.

In the present case, the Petitioner does not dispute that he has tendered his resignation and before the date stipulated for the resignation to be effective the

Petitioner has withdrawn the said resignation. There cannot be any dispute with the proposition that dispute with regard to the genuineness of resignation will have

to be given wider connotation and may include any facet by virtue of which the genuineness of the resignation is doubted. In the present case, the Petitioner has

admitted that he has tendered the resignation on his own volition and freewill, however, before the resignation was placed for acceptance the petitioner withdrew his

resignation. There was no dispute with regard to the genuineness of the resignation. The Division Bench of this court in a case of Kumudini Ratilal Bhagat and

others V/s. State of Maharashtra and others referred to supra held that the nature and the controversy vis a vis such a resignation would be capable of being brought

on the surface either in that meeting or even before thereto. The right to withdraw such a resignation can well be exercised by such a member till the point it has

become effective. It is further observed by the Division Bench that, if, the resignation is voluntarily withdrawn by the concerned member even before the meeting is

actually convened and held then in reality there is no resignation as such in existence which would be required to be placed before the said meeting as prescribed

under Sub Clause 3 of Section 29 of the Maharashtra Village Panchayats Act, 1958 and if, that be so then, logically there would not arise any question about the said

resignation to become effective at all because that view would remain in vacuum. In that even an occasion for the further consequences would not arise at all and the

Division Bench thereafter held that the Petitioners therein were within their right to voluntarily withdraw the said resignation even before the meeting was held and

the said resignation had not become effective. It was further held that the inescapable result therefore is that, these four members are deemed to have been continued

to be the members of the Panchayat as if, they had not resigned at all. The further result therefore is equally inescapable that the action taken by the authorities in

resorting to the provisions contained in Section 145 (1-A) of the Maharashtra Village Panchayats Act, 1958 which proceeded on the erroneous footing that these

members had resigned and the resignations had become effective immediately falls on the ground.

12. In view of the facts of the present case in the meeting before the resignation tendered by the Petitioner was discussed for acceptance, the Petitioner had

withdrawn the resignation, it was not necessary for the Petitioner to take further steps as is held by the division bench of this court in case of Kumudini Ratilal

Bhagat and others V/s. State of Maharashtra and others referred to supra. The present case is squarely covered by the judgment of that court in case of Kumudini

Ratilal Bhagat and others V/s. State of Maharashtra and others referred to supra. In view of that we are not required to consider the interpretation of Sub-Section 3 of

Section 29 of the Maharashtra Village Panchayats Act, 1958

(emphasis supplied)

17. In Mina Kalyan Devdhe (supra) Single Judge of this Court (His Lordship Justice Ravindra V. Ghuge,) has followed the above judgments and has

held as under:

27 Notwithstanding the above, the resolution No.5, which is the decision taken by the Village Panchayat on 14.06.2017, indicates that the subject on the agenda was

approved. The subject on the agenda was only to conduct a verification of the resignation of the Sarpanch. She declared that she has not resigned and has

withdrawn her resignation. Thereafter, it is mentioned as "" ""(resolution accepted). This, therefore, cannot amount to the Village Panchayat accepting the

resignation of the Petitioner when the agenda in the meeting was not regarding the ""acceptance of the resignation"", but purely for conducting an exercise of

verification of the said resignation. On this count as well, the said resolution No.5, which is as vague as it could be, cannot tantamount to acceptance of the

resignation of the Petitioner.

28 In the above backdrop, there was no occasion for the Petitioner to approach the Collector and thereafter, the Additional Divisional Commissioner. It appears that

her approaching the District Collector was on account of an ill advise. When the resolution in the meeting does not indicate that she has resigned or that her

resignation is accepted, the Petitioner, therefore, continued in her position as the Sarpanch. Nevertheless, this answers the third issue that the resignation letter

cannot be accepted by the Gram Panchayat after its withdrawal by the candidate as it did not remain in existence.

(emphasis added)

18. Thus, the view taken by this Court in the above judgments appear to be consistent where right of Member, Upasarpanch, Sarpanch to withdraw

the resignation has been expressly recognised. Coming to the stage on which resignation can be withdrawn, another Division Bench of this Court in

Rajesh Matadin Jaiswal and others vs. Village Panchayat, Wadi, 1987 (1) Bom.C.R. 528 held in paragraphs 2, 6, 7 and 8 as under:

2. For some reason or the other the petitioners, seven in number, tendered resignations from the Panchayat Committee on 4-11-1985, before the Chairman of the

Village Panchayat. Under the provisions of section 29 of the Bombay Village Panchayats Act, 1958 (for short the Act) if there is no dispute raised regarding the

genuineness of the resignations, then the said resignation letters become effective seven days after the same are placed before the meeting of the Committee. In the

present case, the resignation letters dated 1-11-1985, which were tendered on 4-11-1985 were in fact placed before the meeting of the Committee on 11-11-1985. The

petitioners were present at the proceedings of the said meeting held on 11-11-1985. When the item regarding the scrutiny of the resignation letters was taken up, all

the petitioners one after the other expressly stated that they have no intention to press for the resignation, and they also expressed that they are withdrawing the

resignation letters. This fact has been recorded in the proceedings of the meeting, which are at Annexure-2 filed by the Village Panchayat.

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6 It is true that there is no specific provision regarding the withdrawal of resignation. But in our view such a provision is not necessary. In fact, tendering of

resignation is a matter within the volition and unilateral discretion of the Member itself and it only expresses his intention to vacate the Office which he occupies.

There is, however, a provision in the Act that even after the expression of such an intention to withdraw from Office, the resignation does not become effective

forthwith, but has to be placed before the subsequent Committee meeting of the Village Panchayat and it becomes effective only seven days after it is placed before

the Committee Meeting and that too in case there is no dispute regarding the genuineness of the resignation letters. The right to tender resignation and the right to

withdraw the resignation are inter-related since both these acts depend on the discretion of the person tendering the resignation. However, if there is a specific bar in

the statute itself that a resignation once tendered cannot be withdrawn then it is an entirely different matter. In the present Act there is no such specific bar and it

cannot be brought in even impliedly.

7. The view expressed by the Supreme Court in the case of Union of India, etc. v. Gopal Chandra Misra and others etc., are pertinent. In paragraph-51, it has been

stated as follows:---

51. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a Prospective resignation can be withdrawn at any

time before it become effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally

applicable to Government servants and constitutional functionaries.

... ..

In our view, the above decision equally holds good for Members elected to Village Panchayat also.

8. In the result, the instant petition will have to be allowed and is allowed. Rule is made absolute. The respondent-Village Panchayat, Wadi is directed to issue notices

of the meetings of the Village Panchayat to the petitioners as they continued to be the Members of the Village Panchayat, Wadi.

Thus, resignation can be withdrawn when the agenda for verification of resignation is taken up for discussion in the meeting of the Panchayat.

19. Following the law expounded by this Court in above quoted four judgments, in my view Petitioner was fully justified in withdrawing her resignation

during the course of meeting held on 15 March 2024.

20. Coming to the next issue of the effect of Petitioner failing to file a Dispute before the Collector within a period of 7 days of conduct of Gram

Panchayat meeting, it is sought to be contended by Ms. Kapadia that filing of such Dispute is mandatory to stop coming into effect of deeming fiction

of resignation. It is an admitted position that Petitioner did not file any Dispute before the Collector regarding genuineness of her resignation within a

period of 7 days of the meeting dated 15 March 2024. In ordinary circumstances therefore the resignation would have automatically taken effect and

if submissions of M s. Kapadia are to be accepted, mere withdrawal of resignation by the Petitioner was not sufficient and she ought to have created

a Dispute before the Collector so as to stop the resignation from taking effect. However, I am unable to accept the contention of Ms. Kapadia. In my

view, once the resignation is withdrawn, there is nothing to be discussed by in the Gram Panchayat meeting and the meeting qua the subject of

resignation must be terminated immediately after desire for withdrawal for resignation is expressed. Once there is no resignation on account of

withdrawal thereof, the meeting of Gram Panchayat held under the provisions of Sub Section (2) of Section 29 becomes meaningless. The resignation

can be withdrawn at various stages before completion of proceedings of the meeting. In a case where resignation is withdrawn before actual

convening of the meeting, the very need of holding the meeting gets obviated and such meeting needs to be cancelled. When resignation is withdrawn

during the course of conduct of the meeting, the Gram Panchayat cannot then proceed ahead with the exercise of verification and confirmation of

resignation. In such situation also, meeting convened for discussing resignation needs to be forthwith terminated by merely recording withdrawal of

resignation. Once the resignation is withdrawn, same ceases to exist and therefore no discussion can take place in the meeting regarding verification

or confirmation thereof. Following this, since resignation becomes non-existent, the meeting gets terminated and therefore further step of resignation

taking effect under the provisions of Section 29(6) cannot and does not occur. Thus, the moment resignation is withdrawn during the process of

conduct of meeting, the entire process under provisions of Section 29 gets terminated and deeming fiction of acceptance of resignation cannot take

effect. In fact, in Babanrao Uttamrao Jadhav (supra) similar argument as raised by Ms. Kapadia, was sought to be raised on behalf of Respondent

therein, which has been recorded by the Division Bench of this Court in paragraph 9 of the judgment as under:-

9. No particular form for withdrawal of resignation is specified. The representation / application should suggest the intention of the person to withdraw the

resignation. The Respondent has harped upon the fact that, in view of Section 29 (3) of the Maharashtra Village Panchayats Act, 1958, if, the Petitioner wants to

contend that the resignation is not genuine then, he has to refer the dispute to the Collector within 7 days and in the present case it is referred after the lapse of the

period stipulated in Sub Section 3 of Section 29 of the Maharashtra Village Panchayats Act, 1958. According to Respondents even if the Petitioner is not disputing

the factum of tendering resignation as still the same is withdrawn the dispute would arise with regard to the genuineness of resignation inter alia the same was

required to be referred by the Petitioner to the Collector within 7 days from the date on which his resignation is placed before the meeting of the Panchayat. On failure

of the Petitioner to refer the dispute to the Collector within 7 days of the date of the meeting of the Panchayat the said resignation has become effective.

(underlining supplied)

21. Though there is no elaborate discussion by the Division Bench about need for filing a Dispute before the Collector within 7 days in respect of a

withdrawn resignation, the Division Bench has ultimately held that it was not necessary for the Petitioner to take any further step of filing Dispute

once the resignation itself was withdrawn. To this extent the view taken by me appears to be in consonance with the one taken by the Division Bench

in Babanrao Uttamrao Jadhav (supra). The second point qua consideration is accordingly answered by holding that withdrawal of resignation does not

require taking of further step of filing Dispute before the Collector for stopping the deeming fiction of the resignation coming into effect on expiry of

period of 7 days.

22. In my view therefore, Petitioner's resignation did not take effect on account of its withdrawal by her during the course of meeting held on 15

March 2024. The Collector has erroneously arrived at a conclusion that post of the Sarpanch had fallen vacant without appreciating the position that

resignation was already withdrawn. Though the Collector has taken into consideration report of BDO dated 5 April 2024, he has erroneously ignored

specific finding recorded by the BDO in the said letter about withdrawal of resignation by the Petitioner. The findings recorded by the Collector in the

order dated 7 June 2024 about post of Sarpanch becoming vacant is illegal and liable to be set aside. Consequently, the election of Respondent No.4

effected vide resolution adopted by the Gram Panchayat in its meeting dated 13 June 2024 is also ab initio void. Since Petitioner did not vacate the

post of Sarpanch, there is no question of election of Respondent No.4 to that post.

23. Petition accordingly succeeds and I proceed to pass the following order:

(i) Order dated 7 June 2024 passed by the Collector, Raigad is set aside.

(ii) It is declared that resignation of the Petitioner has not taken effect, and Petitioner continues to remain as Sarpanch of Gram Panchayat, Ainghar

Taluka-Roha.

(iii) Consequently, election of Respondent No.4 as Sarpanch vide resolution adopted in the meeting of Gram Panchayat held on 13 June 2024 is set

aside.

24. Writ Petition is allowed in above terms. Considering the facts and circumstances of the case, there shall be no orders as to costs.